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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,687	03/22/2004	Paul B. Darcy	MFPCP.112963	8783

45809 7590 09/18/2006

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EXAMINER

LIM, KRISNA

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,687

Applicant(s)

DARCY ET AL.

Examiner

Krisna Lim

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 30-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. Claims 30-33 are presented for examination, and claims 1-29 and 34-36 were canceled.

2. Claims 30-33 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what the applicant means by "the second schedule being generated as a function of the first schedule to cause a predetermined probability of failure"?

3. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 30-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tam [U.S. Patent No. 6,622,172].

Tam disclosed the invention substantially as claimed. Taking claims 30 and 33 as exemplary claims, the reference disclosed a method (e.g., see the abstract, cols. 2-3) for exchanging data (two-way transmission of data) between a sender (2) and a receiver (6), the method comprising:

a) generating a first schedule (breaking up information into packets of data before transmitting), see abstract) at the sender for sending data to the receiver;

b) generating a second schedule (regulating the frequency of the transmission, see the abstract) at the receiver for receiving data from the sender, the second schedule being generated as a function (assemble then data packets) of the first schedule to cause a predetermined probability of failure (maximum number of data packets allowed to transmit);

c) upon detecting a failure, generating an event (congestion event, see Fig. 2) at the receiver.

5. As to claim 31, Tam disclosed data from the sender not being received at the receiver a predetermined number of times (e.g., a time out) constitutes a failure (e.g., see col. 2, line 55, to col. 3, line 8).

6. As to claim 32, Tam disclosed the step of generating a second schedule includes establishing at least one expectation window (window size) for receiving data from the sender (e.g., see the abstract, cols. 2, 3 and 5).

7. Tam did not explicitly mention the term first schedule and second schedule, since the claims are given their broadest interpretation, the examiner broadly interprets that "a first schedule" would have been obviously similar to the language of "breaking up information into packets of data before transmitting), and "a second schedule" would have been obviously similar to the language of "regulating the frequency of the transmission".

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references are cited in the Form PTO-892 for the applicant's review.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisna Lim whose telephone number is 571-272-3956. The examiner can normally be reached on Monday to Wednesday and Friday from 7:30 AM to 4:00 PM.

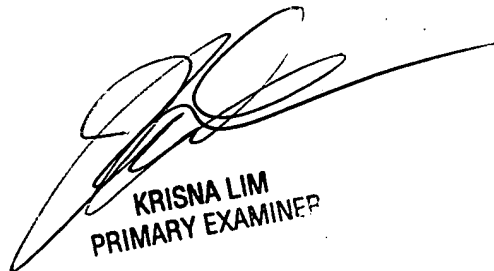
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KI

September 7, 2006



KRISNA LIM
PRIMARY EXAMINER